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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,631	03/08/2001	David E. Babiarz	04489/91885-501	9953

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EXAMINER

MADSEN, ROBERT A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/802,631

Applicant(s)

BABIARZ ET AL.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-3, 6-9 and 13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-9 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 15, 2003 has been entered. Claims 1-3, 6-9, and 13 remain pending in the application.
2. The rejection of claims 1, 2, 7 and 8 under 35 U.S.C. 102(b) as being anticipated by Zimmerman et al. (US 5723163) is withdrawn.
3. The rejection of claims 6 and 13 under 35 U.S.C. 103(a) as being unpatentable over Zimmerman et al. (US 5723163) further in view of Packer et al. (US 5348751) is withdrawn.
4. The rejection of claims 3 and 9 under 35 U.S.C. 103(a) as being unpatentable over Lazarus (US 1566146) further in view of Suzuki et al. (JP 63024853A) is withdrawn.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claims 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Lazarus (US 1566146).

Lazarus teaches forming candy baskets comprising a candy or fruit strip (Page 1, lines 14-19), that is coiled with multiple rotations, as recited in claim 7, wherein the end portion includes a trailing end of the strip as recited in claim 8 (See item 15, Figure 5 in the outer diameter). Lazarus also teaches having the end portion attached to another portion of the strip by application of heat since Lazarus teaches the temperature is maintained high enough so that the candy remains sticky enough that the coiled rotations adhere to one another, as recited in claim 7 (Page 1, lines 38-45, 65-82, 100-106, Figure 5 at the outer diameter).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 2, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds in view of Constable et al. and Solomon.

9. Reynolds teaches rolling a warm sheet of fruit leather, as recited in claim 2, to form homemade fruit rolls, which have two or more layers lying in contact with one another (See Page 2). However, Reynolds is silent in teaching a tack region on the trailing end that serves as the sole point of attachment, as recited in claim 1, or a end

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portion attached to another portion, as recited in claim 7, formed by pressure or application of heat. Examiner is taking claim 1 to mean in a multiple layer coil only one point of attachment occurs and that point is between the trailing end and the adjacent layer.

10. However, Reynolds teaches forming a homemade fruit roll from a fruit sheet, and it is notoriously well known to have pressure formed points of attachments on any type of homemade food roll formed by a food sheet. Constable et al. are relied on as evidence of forming a homemade food roll, a cannoli, by rolling a dough sheet and pressing the end portion, the trailing end as the sole point of attachment, to seal (See Step 3, Page 81). Solomon is relied on as further evidence of the conventionality of forming a homemade food roll, an egg roll, by rolling a dough sheet pressing the end portion, which is the trailing end as the sole point of attachment, to seal (See Egg Rolls, Singapore Style, Page 38). Therefore it would have been obvious to press the end portion, or trailing end, to serve as a sole point of attachment as recited in claims 1 and 7, since Reynolds teaches forming homemade fruit roll by rolling a sheet of fruit leather and Constable et al. and Solomon teach the conventional means for attaching a end portion or trailing end of a food sheet to form a rolled food: applied pressure at the end portion or trailing end to one location on an adjacent portion. One would have been substituting one conventional means for maintaining a food sheet roll form for another.

11. Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds in view of Constable et al. and Solomon., as applied to claims 1,2,7,8, further in view of Shaffer.

12. Although Reynolds teaches adding garnishes, Reynolds is silent in teaching applying a granular coating per se. Shaffer teaches fruit leathers stick to each other during storage and can be coated with sugar to prevent sticking (Page 4—Storing Dry Foods). Therefore, it would have been obvious to coat the exterior of the rolls with sugars since this would prevent sticking during storage.

13. Claims 6 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds in view of Constable et al. and Solomon., as applied to claims 1,2,7,8, further in view of Kendall et al.

14. Although Reynolds teaches wrapping the rolled fruit sheets, Reynolds is silent in teaching packaging them in a bag. Kendall et al. are relied on as evidence of packaging a homemade rolled fruit sheet in a bag (Page 2). Therefore, it would have been obvious to package the rolled fruit sheet of Reynolds in bags since one would have been substituting one type of packaging for another for the same purpose: storing homemade rolled fruit sheets.

#### ***Response to Arguments***

15. Applicant's arguments with respect to claims 1-3,6 have been considered but are moot in view of the new ground(s) of rejection.

16. Applicant arguments directed to Lazurus with respect to claims 7-9, and 13 are not persuasive. Examiner agrees Lazurus does not teach attachment using heat at a sole point, but rather heat attachment at multiple points. However, understanding the term "having" to be the equivalent to "comprising", the recitation of "having an end portion attached to another portion of the strip proximate to the end portion" in claim 7 does not exclude multiple attachment points.

### **Conclusion**

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

18. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

19. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

  
MILTON I. CANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

Robert Madsen  
Examiner  
Art Unit 1761  
June 20, 2003

